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No. 86-1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE MAINE CENTRAL RAILROAD COMPANY AND
THE PORTLAND TERMINAL COMPANY,
Petitioners,

v.

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR RESPONDENT BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF FOR RESPONDENT BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Maine Central Railroad Company and Portland Terminal Company (jointly referred to herein as "Maine Central" or "Railroad") have petitioned this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case. Respondent Brotherhood of Maintenance of Way Employes ("BMWE" or "Union") submits this brief in opposition to the petition.

OPINION OF THE COURT BELOW

The opinion of the court of appeals is reported at 813 F.2d 484 (1st Cir. 1987), and is reproduced as Appendix A to the petitioners' brief. The opinion of the United States District Court for the District of Maine is unreported and is reproduced as Appendix B to the petitioners' brief.

JURISDICTION

The opinion and judgment of the court below were entered on March 10, 1987. The petition was filed on June 8, 1987. The Court has jurisdiction of the petition pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. Art. I, § 8 cl.2:

> The Congress shall have Power . . . to regulate commerce with foreign nations and among the several states and with Indian Tribes.

U.S. Const. Amend. V

> No person . . . shall be . . . deprived of life, liberty or property without due process of law.

Public Law No. 99-385, 100 Stat. 819 (August 21, 1986) is reproduced as Appendix C to the petitioners' brief.[1]

COUNTERSTATEMENT OF THE CASE

This case arises out of a labor dispute between Maine Central and BMWE, the collective bargaining representative of Maine Central's employees who perform track laying and surfacing work, roadway maintenance and building and structural work. Pet. App. A-2. Maine Central petitions for review of the decision of the Court of Appeals for the First Circuit which sustained the con-

[1] The appendices to petitioners' brief will hereinafter be referred to as "Pet. App."

stitutionality of an Act of Congress which extended by sixty days the cooling-off period imposed on the parties pursuant to the Railway Labor Act ("RLA"), 45 U.S.C. § 160. Pet. App. A-3. As explained below, this case deals with only the first of two statutes which Congress enacted to prevent this labor dispute from further interrupting interstate rail commerce.

The Railroad and the Union began negotiations regarding changes in their collective bargaining agreement in 1984. The parties engaged in almost two years of negotiations in accordance with RLA requirements but were unable to reach agreement. On March 3, 1986, BMWE began a strike which it subsequently extended to include secondary picketing of other railroads. Pet. App. A-2.[2]

Pursuant to a determination that the dispute threatened to interrupt interstate commerce and essential transportation services, the President appointed Presidential Emergency Board No. 209 to investigate and report on the dispute. Pet. App. A-2. Under Section 10 of the RLA (45 U.S.C. § 160) appointment of the Emergency Board had the effects of requiring the parties to refrain from the exercise of self-help and of prohibiting them from changing the conditions out of which the dispute arose until thirty days after the Emergency Board submitted its report. The report was issued on June 20, 1986, and Maine Central rejected the Emergency Board's recommendations. The statutory cooling-off period expired on July 20, 1986 and on August 6, 1986, Maine Central unilaterally implemented new work rules and rates of pay. Pet. App. A-3.

On August 12, 1986, Congress enacted the statute here in dispute (Pub. L. No. 99-385, 100 Stat. 819) which extended the cooling-off period for another sixty days

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[2] This Court has recently rejected a challenge to the legality of that secondary picketing in *Burlington Northern R.R. v. Brotherhood of Maintenance of Way Employes*, 481 U.S. ——, 95 L.Ed. 2d 381 (1987).

effective from July 21, 1986, and created a Congressional Advisory Board to investigate and make recommendations regarding the dispute. Pet. App. A-3. The parties remained unable to reach an agreement, accordingly Congress enacted a second statute which made the report and recommendations of the Advisory Board binding on both parties. Pet. App. A-4, n.2.

On August 22, 1986 Maine Central filed an action challenging the constitutionality of the statute extending the cooling-off period (referred to herein as the "First Act"). The district court sustained the constitutionality of the First Act (Pet. App. B-1-4) and the court of appeals affirmed (Pet. App. A-1-17); it is from that decision that Maine Central brings this petition. The second statute is not involved in this case.[3]

REASONS FOR DENYING THE WRIT

The disputed statute was very limited in effect; it merely extended for sixty days the cooling-off period imposed on the parties under the RLA. As such, the First Act involved a minimal exercise by Congress of its plenary authority over interstate commerce, and in particular its well-established authority to regulate labor relations in the rail industry. Because the decision of the court below is entirely consistent with precedent regarding congressional regulation of rail labor disputes, involves a statute which affected a singular labor dispute for a limited period of time, and does not conflict with a

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[3] Maine Central has also challenged the constitutionality of the second statute—*i.e.*, the law which imposed a settlement of the dispute in accordance with the recommendations of the Congressional Advisory Board. That statute will be referred to herein as the "Second Act." The question of the constitutionality of the Second Act is the subject of a separate action (Pet. App. A-4, n.2) and an appeal from the district court's decision affirming the constitutionality of the Second Act is now pending in the Court of Appeals for the First Circuit in *Maine Central Railroad Co. and Portland Terminal Co. v. Brotherhood of Maintenance of Way Employes*, 1st Cir. No. 87-1309.

decision of any other court, the petition for a writ of certiorari should be denied. Moreover, even if the court was inclined to address the issues raised in the petition it would be more appropriate to address them in connection with Maine Central's challenge to the Second Act which finally resolved the dispute by dictating the terms of settlement.

1. The First Circuit correctly observed that this Court "long ago made clear that the operation of interstate railroads has a public aspect justifying the exercise of federal legislative power to keep labor disputes from interrupting interstate commerce." Pet. App. A-6, citing *Wilson v. New*, 243 U.S. 332, 347-48 (1917). The First Circuit also correctly observed that this Court has recognized that the RLA's status quo requirement is central to the design of that statute, which is the mechanism chosen by Congress to regulate labor relations in the rail industry. Pet. App. A-7, citing *Detroit & Toledo Shore Line R.R. v. United Transportation Union*, 396 U.S. 142, 150-152 (1969). Based upon those observations regarding precedent of this Court, and its findings that "[i]n the Maine Central-BMWE dispute, the usual [RLA] procedures were not enough" and that a renewed strike "could be expected", the court of appeals held that "[i]f Congress had the power to create the Railway Labor Act scheme, which it did, it also had the power to modify it", "by extending the dispute resolution process for an additional sixty days." Pet. App. A-7, citing *Virginian Ry. v. System Federation No. 40*, 300 U.S. 515, 553 (1937).

This short review of the findings and conclusions of the court below demonstrates that the petition for writ of certiorari should be denied. Upon expiration of the initial cooling-off period, Maine Central unilaterally changed the work rules and rates of pay of its maintenance of way employees (Pet. App. A-7); it certainly was reasonable for Congress to anticipate that the strike would resume and that interstate commerce would again be disrupted, unless it acted quickly. And it is beyond

dispute that the only effects of the First Act were to extend the cooling-off period to prevent a resumption of the strike and to create a Congressional Advisory Board to investigate the dispute and make recommendations. *See* the text of the First Act, Pet. App. D-1-3. Moreover, it is well established that Congress' power to regulate labor relations in the rail industry includes the authority to intervene, and even to dictate the terms of settlement in rail labor disputes. *Wilson v. New*, 243 U.S. at 347-48. In fact, in its decision affirming the legality of the secondary picketing in *this* dispute, this Court stated, "If the [Emergency] Board's recommendations are not accepted by the parties, Congress has the power to enforce the Board's recommendation by statute as it has done here." *Burlington Northern R.R.*, 95 L.Ed. 2d at 402. *See also Brotherhood of Locomotice Firemen v. Chicago, Burlington & Quincy Railroad Company*, 225 F.Supp. 11 (D.D.C.), aff'd, 331 F.2d 1020 (D.C. Cir.), cert. denied, 377 U.S. 918 (1964), and *Louisville and Nashville Railroad Co. v. Bass*, 328 F.Supp. 732 (W.D. Ky. 1971). If Congress can impose its own solution to a rail labor dispute, then certainly Congress had the authority to simply extend an expired cooling-off period.

Given this Court's recognition of Congress' authority to regulate rail labor disputes, the court of appeals' conclusion that the First Act was merely a modest exercise of that authority, simply extending the RLA cooling-off period, is eminently reasonable and is clearly supported by applicable precedent.

2. Maine Central contends that the First Circuit erred by applying the rational basis test to the Railroads' equal protection challenge to the First Act and that the court should have applied a more rigorous standard of review. Brief for Appellants at 7-16. However, as the court below noted, precedent of this Court is clear that strict scrutiny is applied only to statutes which involve "the inherently suspect classifications of race, national origin or alienage or [which] impinge on a fundamental per-

sonal right"; that "heightened scrutiny" is applied only to statutes which involve classifications based on gender and legitimacy and that economic legislation which does not involve any of those concerns must be upheld "when the legislative means are rationally related to a legitimate government purpose." Pet. App. A-8, citations omitted. Accordingly, because the First Act does not involve any of the concerns which require more rigorous scrutiny, the rational basis test was properly applied.

Maine Central has argued that "heightened scrutiny" must be applied in the instant case because the First Act concerned specifically designated individuals rather than a general class (Brief for Petitioners at 7-13), however, as the First Circuit noted, in cases dealing with legislation affecting specified individuals, this Court has applied the rational basis test. Pet. App. A-10-14, citing *Fort Smith Light and Traction Co. v. Board of Improvement*, 274 U.S. 387 (1927); *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976). Maine Central has attempted to distinguish these decisions asserting that *Nixon* is inherently distinguishable; and that *Fort Smith* and *Dukes* differ from the instant case in that the statutes there in dispute did not specifically identify the individuals affected, but rather used general terms which, *in actual application*, affected only specific individuals. Brief for Petitioners at 13-15. BMWE submits that Maine Central has failed to demonstrate any basis for distinguishing *Nixon* from the instant case; and that the distinction identified with regard to *Fort Smith* and *Dukes* is plainly insubstantial. Moreover, the Railroad has not identified a single case in which heightened scrutiny has been applied to economic legislation solely because only one individual was affected.[4]

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[4] As the court of appeals correctly observed, Maine Central's reliance on *McFarland v. American Sugar Refining Co.*, 241 U.S. 79 (1916); *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79 (1901) and *Atchison, T. & S.F. R.R. v. Mathews*, 174 U.S. 96 (1899) is mis-

Finally, the First Circuit's application of the rational basis test was correct in this case. As the court of appeals stated, "it is not arbitrary or irrational to extend the Railway Labor Act mechanism for sixty days in the face of a strike threatening interstate comemrce rather than to prohibit such strikes in general." Pet. App. A-14, citing *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955).[5] Accordingly, Maine Central's equal protection argument does not provide a basis for granting the writ.

3. Maine Central's argument that the First Act is inherently unconstitutional because it addresses specified individuals (Brief for Petitioners at 6, 10-11) is plainly without force. The court of appeals correctly found (Pet. App. A-16) that this Court long ago concluded, that the Constitution "contains no provision against private acts enacted by the federal government except for a prohibi-

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placed since those cases predate this Court's determination that economic legislation should be analyzed under the rational basis test. The holdings in those cases were based on findings not merely that statutes addressed specific individuals, but rather that similarly situated individuals were treated differently and, in any event, the type of analysis employed in those cases was consistent with the modern rational basis test. Pet. App. A-9-11.

[5] For the same reason, the Railroad's argument that the Union's successful use of secondary picketing suggests a need for review by this Court (Brief for Petitioners at 7) is likewise incorrect. This Court has held that secondary picketing is not prohibited under the RLA. *Burlington Northern R.R., supra*, accordingly the Union's use of this particular form of self-help does not distinguish this case from other cases affirming Congress' authority to intervene in rail labor disputes. It is certainly rational for Congress to assume that the regular RLA mechanisms will continue to be effective in most rail labor disputes, and that the availability of secondary picketing as a method of self-help does not require a fundamental change in the RLA and will not require frequent Congressional intervention in rail labor disputes. As the Court observed in *Burlington Northern*, "while opinion regarding the RLA's success in meeting its goals have varied over time, it does appear that under the RLA labor and management have been able to resolve most conflicts without resort to secondary picketing." 95 L.Ed. 2d at 402.

tion of bills of attainder and grants of nobility." *Paramino Lumber Co. v. Marshall*, 309 U.S. 370, 380 (1940), (footnote omitted).

4. Maine Central's final contention, that the First Act violates the doctrine of separation of powers because it constitutes an adjudication of the rights of the parties, is insubstantial on its face. As the court of appeals noted, the First Act was "merely an extension to a constitutionally valid scheme for encouraging dispute resolution by preserving existing rights" and Congress' power to regulate interstate commerce necessarily included the ability to take action to prevent disruption of interstate rail traffic. Pet. App. A-15-16, citing *Wilson v. New*, 243 U.S. at 248. Furthermore, the First Act "did not determine 'who shall prevail' " and it was not "addressed to a justiciable case or controversy." Pet. App. A-16. Accordingly, the court of appeals correctly held that the First Act does not adjudicate the rights of the parties and therefore does not violate the doctrine of separation of powers.[6]

In short, petitioners have not raised any argument in this case that involves an unsettled area of law or the need for this Court to exercise its supervisory powers over the lower federal courts. Moreover, since this case involves solely the first of two Acts of Congress which dealt

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[6] See also this Court's decision in *Vermont v. New York*, 417 U.S. 270, 277 (1974)—judicial power "embraces application of principles of law or equity to facts, distilled by hearings or by stipulation"; and the decisions of the courts of appeals in *Airline Pilots Association International v. Quesada*, 276 F.2d 892, 896 (2d Cir. 1960) and *Willapoint Oyster, Inc. v. Ewing*, 174 F.2d 676, 693 (9th Cir.), *cert. denied*, 338 U.S. 860 (1949), stating that adjudication involves the imposition of a duty or enforcement of a right *in personam*, which is dependent on a pre-existing duty or right. The First Act certainly does not involve application of principles of law or equity to facts distilled by hearings, or the imposition of a duty, or the enforcement of a right, which existed prior to the passage of the statute or the beginning of this dispute.

with this labor dispute, and since the Act at bar simply extended the status quo period for a short period of time that has long past, this case does not present a good vehicle to examine the breadth of Congress' power to regulate rail labor relations while regulating interstate commerce.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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